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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA  
SACRAMENTO DIVISION

FILED  
SEP - 4 2007  
UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA

In re: )  
5 MICHAEL HAT, dba MICHAEL HAT )  
6 FARMING COMPANY, )  
7 Debtor(s). )  
8  
9 JOHN VAN CUREN, CHAPTER 11 )  
10 TRUSTEE, )  
11 Plaintiff, )  
12 vs. )  
13 THE BANK OF THE WEST, as )  
14 successor in interest to )  
15 United California Bank, )  
16 formerly known as Sanwa Bank )  
17 California, a California )  
18 Corporation, )  
19 Respondent(s). )  
AND RELATED COUNTERCLAIM )  
Case No. 04-32497-B-11  
POSTED ON WEB SITE ✓  
Adv. No. 05-2506-B ✓  
D.C. No. JND-1 ✓  
GSMD-1 ✓  
GSMD-2 ✓  
Submitted June 19, 200

**MEMORANDUM DECISION**

22 In Docket Control Number JND-1 ("Bank Motion to  
23 Reconsider"), moving party, The Bank of the West ("Bank"), asks  
24 the court to reconsider its order entered December 29, 2006 (the  
25 "First Bank SJ Order") (Adv. Dkt. 124) denying Bank's  
26 countermotion for summary judgment ("First Bank SJ Request"),  
Docket Control Number GSMD-1, Adv. Dkt. 53. Plaintiff John Van

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1 Curen ("Trustee") opposes the Bank Motion to Reconsider. For the  
2 reasons stated herein, the Bank Motion to Reconsider is granted.  
3 The First Bank SJ Order is vacated. On reconsideration, the  
4 First Bank SJ Request is granted in part in favor of the non-  
5 moving party, Trustee, and denied in part. Summary judgment is  
6 denied. The court grants summary adjudication to Trustee on the  
7 issue of perfection of Bank's security interest in the Trailers,  
8 as hereinafter defined, on July 20, 2001. Except to the  
9 foregoing extent, the First Bank SJ Request is denied.

10 In Docket Control Number GSMD-2 (hereinafter defined as the  
11 Second Trustee SJ Request), Trustee seeks partial summary  
12 judgment on his first claim for relief. Bank opposes. For the  
13 reasons stated herein, the Second Trustee SJ Request, is granted  
14 in part. Pursuant to Federal Rule of Bankruptcy Procedure  
15 ("Fed.R.Bankr.P.") 7056(d), incorporating Federal Rule of Civil  
16 Procedure ("Fed.R.Civ.P.") 56, Trustee is entitled to summary  
17 adjudication on the issue of perfection of Bank's security  
18 interest in the Trailers, as hereinafter defined, on July 20,  
19 2001. Except to the foregoing extent, the Second Trustee SJ  
20 Request is denied.

21 On January 18, 2007, Bank filed the Bank Motion to  
22 Reconsider. On February 7, 2007, Trustee filed opposition to the  
23 Bank Motion to Reconsider and also filed the present  
24 countermotion, the Second Trustee SJ Request. After three  
25 continued hearings, the submission of a stipulated statement of  
26 facts (Adv. Dkt. 194) (the "Stipulated Facts"), and supplemental  
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1 briefing, the court held final hearings in Sacramento, California  
2 on June 19, 2007. Appearances were noted on the record. At the  
3 conclusion of the hearings, the Bank Motion to Reconsider and the  
4 Second Trustee SJ Request were taken under submission.

5 The Bank Motion to Reconsider, the First Bank SJ Request  
6 and the Second Trustee SJ Request are core proceedings, and the  
7 court has jurisdiction all matters. 28 U.S.C. §§ 1334 and 157.  
8 Venue is proper in this court under 28 U.S.C. § 1409. There is  
9 no dispute concerning jurisdiction, venue or core status.

10 The following constitutes the court's findings of fact and  
11 conclusions of law pursuant to Fed. R. Bankr. P. 7052.

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#### 13 PROCEDURAL HISTORY

14 On July 20, 2001 (the "Petition Date"), Michael Hat, dba  
15 Michael Hat Farming Company ("Debtor") commenced the above-  
16 captioned voluntary Chapter 11 case. Debtor acted as debtor-in-  
17 possession until April 11, 2003, when Trustee was appointed.  
18 Trustee obtained confirmation of his second amended plan of  
19 liquidation on August 24, 2005.

20 On December 12, 2005, the Trustee filed the instant  
21 adversary proceeding. An amended complaint was filed on December  
22 29, 2005, setting forth two claims for relief. The first claim  
23 for relief seeks to avoid Bank's interest in 118 sets of farm  
24 trailers using the "strong-arm" powers of 11 U.S.C. § 544. The  
25 second claim for relief objects to Bank's claim as authorized by  
26 Section 5.4.3.3 of the confirmed chapter 11 plan. Bank answered

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1 the amended complaint and filed a counterclaim on January 11,  
2 2006. The answer admitted this court's jurisdiction, that this  
3 court was the proper venue, and that this matter was a core  
4 proceeding. It denied a sufficient portion of the amended  
5 complaint to keep the matter at issue. The counterclaim set  
6 forth one claim for relief alleging unjust enrichment. Trustee  
7 answered the counterclaim on January 24, 2006.

8 Trustee filed his first motion for partial summary judgment  
9 (D.C. No. GSMD-1) ("First Trustee SJ Request") on August 15, 2006  
10 (Adv. Dkt. 20). On September 12, 2006, Bank filed timely  
11 opposition to the First Trustee SJ Request and, by countermotion,  
12 the First Bank SJ Request. After several continuances, the First  
13 Trustee SJ Request and the First Bank SJ Request came on for  
14 final hearings on November 7, 2006 at which time the matters were  
15 taken under submission. By orders entered December 29, 2006, the  
16 court denied both the First Trustee SJ Request and the First Bank  
17 SJ Request. As to the First Trustee SJ Request, the court  
18 concluded that Bank's evidentiary objections eliminated any  
19 evidence identifying the property that was the subject of the  
20 amended complaint. As to the First Bank SJ Request, the court  
21 concluded that Bank had failed to provide sufficient independent  
22 evidence identifying the property at issue and showing that Bank  
23 was entitled to summary judgment.

24 On January 18, 2007, Bank filed the Bank Motion to  
25 Reconsider. On February 7, 2007, Trustee filed opposition to the  
26 Bank Motion to Reconsider and also filed a countermotion, (D.C.  
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1 No. GSMD-2), again seeking partial summary adjudication ("Second  
2 Trustee SJ Request") (Adv. Dkt. 144). At a hearing on April 3,  
3 2007, the court urged the parties to attempt to generate a  
4 stipulated statement of facts on which the court could rely in  
5 rendering a decision on the merits. The parties filed the  
6 Stipulated Facts on May 31, 2007. After one additional  
7 continuance for the parties to submit supplemental briefs  
8 addressing the effect of the Stipulated Facts, the Second Trustee  
9 SJ Request and the Bank Motion to Reconsider came on for a final  
10 hearing on June 19, 2007, at which time the matters were taken  
11 under submission.

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13 **FACTS**

14 AS noted above, on May 31, 2007, the parties filed the  
15 Stipulated Facts, which incorporate the contents of Schedules A  
16 and B attached as exhibits to the Stipulated Facts. The facts  
17 alleged in the Stipulated Facts are fully incorporated herein.

18 Prior to the Petition Date, Debtor and two related companies  
19 conducted an agricultural enterprise in the Central Valley of  
20 California. Grapeco, Inc., one of the related companies, filed  
21 its own chapter 11 petition on the Petition Date in the above-  
22 referenced Bankruptcy Court, commencing case no. 01-92889-A-7  
23 (now designated case no. 04-32498-B-7). Capello, Inc., the other  
24 related company, also filed a chapter 11 petition on the Petition  
25 Date in said Bankruptcy Court, commencing case no. 01-92890-A-7  
26 (now designated case no. 04-32499-B-7). The bankruptcy cases of

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1 Grapeco, Inc. and Capello, Inc. have since been converted to  
2 chapter 7 of the Bankruptcy Code, and chapter 7 trustees have  
3 been appointed.

4 As of the Petition Date, Bank asserted a perfected security  
5 interest in all of Debtor's personal property, including  
6 equipment and vehicles, pursuant to a UCC-1 financing statement  
7 filed in the California Secretary of State's office on April 9,  
8 1992, and a UCC-2 continuation statement filed on November 19,  
9 1996.

10 On February 11, 2007, the court approved a stipulation  
11 between Bank and Trustee for relief from the automatic stay. The  
12 stipulation allowed Bank to foreclose on equipment collateral,  
13 including "94 sets of good trailers and 24 sets of junk  
14 trailers."

15 On March 3, 2004, Bank foreclosed on its equipment  
16 collateral by private sale to Jennifer Hat, formerly known as  
17 Jennifer Horan ("Horan") pursuant to an Asset Purchase Agreement  
18 ("APA") dated March 3, 2004. The APA identified the purchased  
19 assets, including "94 sets good trailers and 24 sets good [sic]  
20 trailers." Bank sold to Horan, and she took physical possession  
21 of, 216 individual trailers pursuant to the APA. Two hundred  
22 sixteen (216) individuals trailers (the "Trailers") are  
23 identified in Schedule A attached to the Stipulated Facts. (Adv.  
24 Dkt. 194 at 6). The registration status of each Trailer, i.e.  
25 the date on which the last registration expired for each Trailer  
26 prior to the Petition Date or the date on which Debtor last

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1 obtained a certificate of planned non-operation prior to the  
2 Petition Date, is set forth on Schedule B to the Stipulated  
3 Facts. (Adv. Dkt. 194 at 16).

4       Each "set" of Trailers consists of two Trailers: a semi  
5 trailer with a single axle, to be attached to a truck, and a pull  
6 trailer with two axles, to be attached to the semi trailer. Each  
7 Trailer has a flat bed to which open tanks that hold harvested  
8 crops of grapes may be affixed. No Trailer is equipped with  
9 rollers on its bed. The manufacturer and model years of the  
10 Trailers vary. Each Trailer, without load, weighs at least three  
11 tons. Each Trailer is capable of hauling, and, when properly  
12 registered, did haul approximately 12 tons of grapes. Therefore,  
13 each of the Trailers, considering its own weight and its typical  
14 load, would generally weigh in excess of 30,000 pounds when  
15 loaded. Each Trailer has a gross weight vehicle rating (meaning,  
16 the maximum weight, with load, legally allowable for that vehicle  
17 on public roads) in an amount in excess of 30,000 pounds. The  
18 Trailers are not capable of moving on their own, as they do not  
19 contain motors, and are instead pulled by a truck.

20       The Trailers were used as part of the process of harvesting  
21 grapes in the following manner. Mechanical grape harvesters  
22 picked the grapes from the vines. The grape harvesters  
23 transferred the picked grapes by conveyor belt to grape gondolas,  
24 which had been brought into the fields. When the gondolas were  
25 filled, tractors would pull the gondolas to the Trailers, which  
26 were located at either end of the field. The Trailers would be  
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1 filled and were then moved on public roads to remote processing  
2 facilities. These processing facilities included the Grapeco  
3 processing facility in Madera, California, and the Capello winery  
4 in McFarland, California. In some cases the Trailers were moved  
5 for more than one hundred miles on public highways.

6 Debtor's harvest season generally included the months of  
7 August, September, and October. Debtor's general practice was to  
8 register those trailers that the Debtor intended to use during  
9 the harvest season with the California Department of Motor  
10 Vehicles (the "DMV") on a partial-year basis. Once the harvest  
11 season was over and the hauling of Debtor's crops was complete,  
12 Debtor would file certificates of planned non-operation for each  
13 trailer pursuant to California Vehicle Code Section 4604(a). The  
14 DMV issued permanent trailer identification cards or registration  
15 cards for each Trailer after March 3, 2004, the date Bank and  
16 Horan entered into the APA.

17 Debtor did not file certificates of planned non-operation  
18 for the Trailers after the 1999 harvest. Prior to the Petition  
19 Date, the DMV issued a certificate of ownership entitled  
20 "Certificate of Title" for each Trailer, containing the vehicle  
21 identification number, make and model year of the trailer, and  
22 the name and address of the registered owner and any legal owner.  
23 At no time was Bank ever listed as the legal owner or lienholder  
24 on any of the certificates of ownership for any of the Trailers.

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1 ANALYSIS

2 JND-1: Issues

3 As to JND-1, the analysis first addresses whether  
4 reconsideration of the First Bank SJ Request is appropriate.  
5 Second, the analysis addresses whether and if so, to what extent  
6 the First Bank SJ Request should be granted.

7 GSMD-2: Issues

8 As to GSMD-2, the analysis first addresses whether Trustee  
9 may seek partial summary judgment in this adversary proceeding a  
10 second time, the court having denied his first motion for partial  
11 summary judgment. Second, the analysis addresses whether Trustee  
12 may bring an independent motion for partial summary adjudication  
13 on the issues of perfection of Bank's security interest, and the  
14 avoidance of Bank's security interest, without addressing Bank's  
15 affirmative defenses. Third, the analysis addresses the merits  
16 of the issues of perfection and avoidance of Bank's security  
17 interest.

18 JND-1: Reconsideration

19 Bank seeks reconsideration of the SJ Order which denied the  
20 First Bank SJ Request based on finding that the First Bank SJ  
21 Request lacked independent admissible evidence identifying the  
22 property at issue in this adversary proceeding. The Bank Motion  
23 to Reconsider requests that the court exercise its inherent  
24 equitable power to modify or vacate its own interlocutory order  
25 in the interest of justice. Smith v. Massachusetts, 543 U.S.  
26 462, 125 S.Ct. 1129 (2005); A&A Sign Company, Inc. v. Maughan,

1 419 F.2d 1152, 1155 (9<sup>th</sup> Cir. 1969). Such reconsideration is  
2 appropriate where (1) there is newly discovered evidence, (2) the  
3 court committed clear error, (3) the decision was manifestly  
4 unjust, or (4) there is an intervening change in controlling law.  
5 School District No. 1J, Multnomah County, Oregon v. A C and S,  
6 Inc., 5 F.3d 1255, 1263 (9<sup>th</sup> Cir. 1993). Bank argues that this  
7 court committed clear error in finding that, because it sustained  
8 Bank's objections to Trustee's evidence, no admissible evidence  
9 of the identity of the property at issue was presented, and  
10 neither the First Trustee SJ Request nor the First Bank SJ  
11 Request could be granted. The court agrees with Bank's  
12 contention and therefore grants the request to reconsider the  
13 First Bank SJ Request.

14 Bank correctly points out that a short excerpt from the  
15 deposition of Horan contained in the voluminous exhibits to the  
16 First Bank SJ Request properly authenticated Exhibit 9 to the  
17 Horan deposition which consisted of the permanent trailer  
18 registration cards for approximately 210 trailers. The  
19 deposition was itself properly authenticated by inclusion of the  
20 reporter's certification. Orr v. Bank of America, N.T & S.A.,  
21 285 F.3d 764, 774 (9<sup>th</sup> Cir 2002). Bank also provided a summary  
22 prepared by counsel of the information contained in Exhibit 9.  
23 The summary was attached to the notice of hearing on the First  
24 Bank SJ Request. The court did not see the summary during the  
25 initial resolution of the First Bank SJ Request, primarily  
26 because the court did not look at the notice of hearing for  
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1 evidence in support of the motion. See Local Bankruptcy Rule  
2 9014-1(d)(1) and the Revised Guidelines for Preparation of  
3 Documents, ¶ (6)(a).

4 Considering the evidence detailed in the Bank Motion to  
5 Reconsider, the court agrees that there was independent  
6 admissible evidence filed with the First Bank SJ Request and that  
7 the court's prior ruling concluding differently was clear error.  
8 Based on this finding, the court holds that reconsideration is  
9 appropriate in this circumstance and the Bank Motion to  
10 Reconsider is granted to that extent.

11 **GSMD-1: Reconsideration of the First Bank SJ Request**

12 On reconsideration, the First Bank SJ Request is granted in  
13 part and denied in part on the merits. Bank is not entitled to  
14 summary judgment because the court concludes that Bank has failed  
15 to show that its security interest was perfected on the Petition  
16 Date. Instead, the law and facts show that Bank was not  
17 perfected on the Petition Date. The court declines in this  
18 ruling to grant summary judgment to the Trustee on the first  
19 claim for relief as the other elements of that claim are not at  
20 issue in the First Bank SJ Request. See Portsmouth Square, Inc.,  
21 v. Shareholders Protective Committee, 770 F.2d 866, 869 (9<sup>th</sup> Cir.  
22 1995) ("[S]ua sponte summary judgment is appropriate where one  
23 party moves for summary judgment and, after the hearing, it  
24 appears from all the evidence presented that there is no genuine  
25 issue of material fact and a non-moving party is entitled to  
judgment as a matter of law."). However, pursuant to

1 Fed.R.Civ.P. 56(d), incorporated by Fed.R.Bankr.P. 7056, the  
2 court concludes that the undisputed material facts show that  
3 Trustee is entitled to "partial summary judgment," i.e. summary  
4 adjudication, on the issue of perfection as of the Petition Date.  
5 11 MOORE'S FEDERAL PRACTICE, § 56.40[2] (Matthew Bender 3d ed.  
6 2007) ("Because of the particular nature of the claims raised, a  
7 court may also make a partial summary judgment ruling that  
8 resolves issues of both law and fact.") citing Gillette v.  
9 Delmore, 886 F.2d 1194, 1197-1199 (9<sup>th</sup> Cir. 1989).

10 Fed.R.Civ.P. 56, incorporated by Fed.R.Bankr.P. 7056,  
11 provides that summary judgment is appropriate if the pleadings,  
12 depositions, answers to interrogatories, admissions on file, and  
13 declarations, if any, show that there is "no genuine issue of  
14 fact and that the moving party is entitled to judgment as a  
15 matter of law."

16 Bank filed the First Bank SJ Request on the first amended  
17 complaint filed by Trustee on December 29, 2005 (Dkt. No. 8).  
18 The first claim for relief in the first amended complaint seeks  
19 to avoid an allegedly unperfected security interest in the  
20 Trailers pursuant to the strong arm powers of 11 U.S.C. §§  
21 544(a)(1) and (a)(2) and to recover the Trailers or their value.  
22 The second claim for relief objects to Bank's claim under Section  
23 5.4.3.3 of the confirmed chapter 11 plan.

24 Through the First Bank SJ Request, Bank seeks summary  
25 judgment on the first claim for relief arguing that the security  
26 interest in the Trailers was properly perfected as of the  
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1 Petition Date and is therefore unavoidable. Were Bank to prevail  
2 on the first claim for relief, the second claim for relief would  
3 become moot. Bank argues that summary judgment is appropriate  
4 because the undisputed facts before the court entitle Bank to  
5 judgment as a matter of law. Although the court agrees that  
6 there are no disputes of material fact on this issue,  
7 particularly so after submission of the Stipulated Facts, Bank  
8 has not shown that it is entitled to judgment as a matter of law.  
9 Therefore, summary judgment in favor of Bank on the First Bank SJ  
10 Request is denied.

11 The First Bank SJ Request did not seek to prove that Bank is  
12 entitled to judgment on each and every element of the first claim  
13 for relief. Bank is not required to make such a showing.  
14 Instead, if Bank can show that the Trustee cannot meet his burden  
15 of proving a single necessary element of the first claim for  
16 relief, then Bank will prevail. Adickes v. S.H. Kress & Co., 398  
17 U.S. 144, 158-60 (1970). In the First Bank SJ Request, Bank has  
18 chosen to focus solely on the issue of perfection of its security  
19 interest in the Trailers. That issue is addressed below.

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21 **GSMD-2: Trustee May Bring A Second Motion  
for Partial Summary Adjudication**  
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23 In its opposition to the Second Trustee SJ Request, Bank  
24 argues that Trustee may not bring a second motion for a partial  
25 summary adjudication on the same grounds asserted in Trustee's  
26 first motion for a partial summary adjudication. Bank asserts  
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1 that the Second Trustee SJ Request must be judged under the  
 2 standards for a motion for reconsideration. Bank contends that  
 3 such reconsideration is only appropriate where (1) there is newly  
 4 discovered evidence, (2) the court committed clear error, (3) the  
 5 decision was manifestly unjust, or (4) there is an intervening  
 6 change in controlling law. School District No. 1J, Multnomah  
 7 County, Oregon v. A C and S, Inc., 5 F.3d 1255, 1263 (9<sup>th</sup> Cir.  
 8 1993). Bank argues that Trustee has not satisfied this standard.

9 Without explicitly stating that the court's prior order  
 10 denying Trustee summary judgment is the "law of the case," Bank's  
 11 recitation of the standard for reconsideration nonetheless  
 12 impliedly asserts that the law of the case doctrine applies here.  
 13 To the extent that the law of the case doctrine is applicable,  
 14 however, it simply expresses a common judicial practice and does  
 15 not limit the court's power. See Castro v. United States, 540  
 16 U.S. 375, 124 S. Ct. 786, 793 (2003). Application of the law of  
 17 the case doctrine is discretionary and does not limit a court's  
 18 power to reconsider its own decisions prior to final judgment.  
 19 Arizona v. California, 460 U.S. 605, 103 S. Ct. 1382,  
 20 ("Law of the case directs a court's discretion, it does not  
 21 limit the tribunal's power."). The law of the case doctrine is  
 22 not discretionary only when the mandate of a higher court is  
 23 involved. See City of Los Angeles v. Santa Monica BayKeeper, 254  
 24 F.3d 882, 888-89 (9<sup>th</sup> Cir. 2001) (law of the case doctrine does  
 25 not impinge on district court's power to reconsider its own

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1 interlocutory order so long as that court has not been divested  
2 of jurisdiction over order by commencement of appeal).

3 Furthermore, in the Ninth Circuit "[i]t is well-settled that  
4 a denial of summary judgment does not establish law of the case  
5 and does not preclude a second motion for summary judgment."  
6 Hydranautics v. FilmTec Corp., 306 F. Supp. 2d 258, 968 (S.D.  
7 Cal. 2003) (citing Shouse v. Ljungren, 792. F.2d 902, 904 (9<sup>th</sup>  
8 Cir. 1986); Preaseau v. Prudential Ins. Co. of America, 591 F.2d  
9 74, 79-80 (9th Cir.1979); Dessar v. Bank of America Nat. Trust  
10 and Sav. Ass'n, 353 F.2d 468, 470 (9th Cir.1965); Beedy v.  
11 Washington Water Power Co., 238 F.2d 123, 127 (9th Cir.1956);  
12 Breeland v. Southern Pac. Co., 231 F.2d 576, 579 (9th Cir.1955);  
13 Curran v. Kwon, 153 F.3d 481, 487 (7th Cir.1998)). The court's  
14 prior order denying the First Trustee SJ Request does not bind  
15 this court's subsequent determinations. Bank has cited no  
16 authority, other than the general standard that governs motions  
17 for reconsideration, that prohibits Trustee from bringing a  
18 second motion.

19 In this instance the court finds that it is appropriate to  
20 decide the merits of the Second Trustee SJ Request. The court  
21 previously felt unable to reach the merits of the First Trustee  
22 SJ Request because of the perceived absence of admissible  
23 evidence identifying the property at issue. Now that the parties  
24 have stipulated to facts and have developed the record more  
25 fully, it is appropriate to reach the previously unaddressed  
26 merits of the underlying legal issue.

1 GSMD-2: Partial Summary Adjudication by Independent Motion  
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3 Bank also argues that Trustee cannot properly request  
4 partial summary judgment subject to remaining affirmative  
5 defenses that Bank may assert. Bank construes the trustee's  
6 request as "seeking a determination of a single issue encompassed  
7 within a claim for relief or defense." (Adv. Dkt. 170 at 13)  
8 (emphasis in original). Bank asserts that Trustee is only  
9 seeking the partial summary adjudication of a single discrete  
10 issue that is contained within his first claim for relief. That  
11 issue, Bank asserts, is "the proper method by which one perfects  
12 a security interest in hauling trailers." (Adv. Dkt. 170 at 14).  
13 Bank argues that Trustee cannot obtain a partial summary  
14 adjudication on that issue by filing a motion that requests a  
15 determination as to that issue alone while reserving other issues  
16 related to liability or defenses for a later proceeding. Bank  
17 argues that the Second Trustee SJ Request should be denied  
18 because it is procedurally improper.

19 The court disagrees with Bank's assertion that the Second  
20 Trustee SJ Request should be denied because it chiefly asks for  
21 resolution of one issue affecting the first claim for relief.<sup>1</sup>  
22 Furthermore, the court concludes that Trustee may seek partial  
23 summary adjudication by independent motion. Rule 56(a) provides  
24 that a party seeking to recover upon a claim, counterclaim, or

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25 <sup>1</sup> The court notes that Trustee also seeks a determination as  
26 to a second issue: whether he may avoid Bank's security interest.  
27 For reasons discussed below, that request is denied without  
prejudice.

1 cross-claim may after the expiration of twenty days after the  
2 commencement of the case, "move . . . for a summary judgment in  
3 the party's favor upon all or any part thereof." Fed.R.Civ.P.  
4 56(a) (emphasis added). Whether the phrase "any part thereof"  
5 permits adjudication of individual issues within a claim or  
6 defense is unclear. Schwarzer, Tashima, and Wagstaffe in FEDERAL  
7 CIVIL PROCEDURE BEFORE TRIAL ¶ 14:40 (2007) collect cases that have  
8 allowed piecemeal disposition of issues. See Barker v. Norman,  
9 651 F.2d 1107, 1123 (5<sup>th</sup> Cir. 1981) (noting that summary judgment  
10 may be proper as to some issues but not as to others); Robi v.  
11 Five Platters, Inc., 918 F.2d 1439 (9th Cir. 1990) (permitting  
12 summary adjudication of issues based on collateral estoppel  
13 effect of prior proceeding). They have also collected cases that  
14 disapprove piecemeal disposition of issues. See Arado v. General  
15 Fire Extinguisher Corp., 626 F.Supp 506, 509 (N.D. Ill.  
16 1985) ("[D]espite Rule 56(a)'s reference to 'all or any part' of a  
17 claim, the Rule authorizes only the granting of appealable  
18 'judgments' disposing of entire claims."); SEC v. Thrasher, 152  
19 F.Supp.2d 291, 295 (S.D.N.Y. 2001) (holding that "summary judgment  
20 is not a vehicle for fragmented adjudication of non-determinative  
21 issues"). To the extent that Rule 56(a) is read as permitting  
22 only the granting of a "judgment" as that term is used to stand  
23 for a final, appealable decision of the court, the court agrees  
24 with Bank. Trustee cannot obtain a judgment on the first claim  
25 for relief without addressing Bank's affirmative defenses.

1       The nature of Trustee's request also prevents him from  
2 obtaining the interlocutory summary judgment described in Rule  
3 56(c). Rule 56(c) provides that a summary judgment,  
4 "interlocutory in character, may be rendered on the issue of  
5 liability alone although there is a genuine issue as to the  
6 amount of damages." Fed.R.Civ.P. 56(c). As a mechanism for  
7 granting "partial summary judgment on [Trustee's] first claim for  
8 relief, subject to" Bank's remaining affirmative defenses, Rule  
9 56(c) is unavailable. Bank has asserted affirmative defenses  
10 that are directed at the issue of Bank's liability, including  
11 waiver, estoppel, unclean hands, and consent. Trustee cannot  
12 obtain an interlocutory summary judgment under Rule 56(c) without  
13 addressing these affirmative defenses.

14       However, Rule 56 does provide a mechanism by which Trustee  
15 may obtain a determination in the form of an order of the court  
16 which resolves a single issue that is part of the first claim for  
17 relief. Rule 56(d) provides that if a court does not render  
18 judgment upon the whole case or for all relief requested, the  
19 court shall if practicable ascertain what material facts are  
20 disputed and undisputed and "make an order specifying the facts  
21 that appear without substantial controversy, including the extent  
22 to which the amount of damages or other relief is not in  
23 controversy." Fed.R.Civ.P. 56(d) (emphasis added). "In rendering  
24 a partial summary judgment ruling in favor of a movant, a court  
25 need not provide relief completely dispositive of individual  
26 claims that are part of a larger action. A partial summary

1 judgment ruling may dispose of only a single issue relevant to a  
2 claim." 11 James Wm. Moore, et al., MOORE'S FEDERAL PRACTICE §  
3 56.40[2] (3<sup>rd</sup> Ed. 2007). Rule 56(d) allows a court to salvage  
4 some of the effort involved in ruling on a failed motion for  
5 summary judgment by resolving issues of law and fact for which a  
6 trial would not be necessary. By issuing orders that resolve  
7 significant questions, the court can focus on the true matters in  
8 controversy. Id. (collecting cases). Although Professor Moore  
9 refers to the relief allowed by Rule 56(d) as "partial summary  
10 judgment," noting that it is now well-established that a court  
11 may "grant" partial summary "judgment," this court prefers the  
12 term "partial summary adjudication" as a means of distinguishing  
13 the relief permitted by Rule 56(d) from a final, appealable  
14 judgment. See Id. at § 56.40[1]. Rule 56(d) permits the court  
15 to enter relief in the nature of what Trustee seeks: a  
16 determination as to a single issue of law based on the undisputed  
17 facts contained in the Stipulated Facts, without reaching the  
18 question of whether affirmative defenses apply.

19 The issue, then, is whether Trustee may obtain this relief  
20 by filing an independent motion seeking adjudication of a  
21 particular issue, rather than filing a motion for full summary  
22 judgment that addresses all elements of the claim and all  
23 affirmative defenses. Bank argues that Rule 56(d) does not  
24 permit an independent motion. The logical extension of this  
25 argument is that the court may make a determination under Rule  
26 56(d) only after having been presented with a motion for full  
27

1 summary judgment, having considered it, and having determined  
 2 that it cannot be granted.

3 This argument is unpersuasive for two reasons. First, the  
 4 United States District Court for the Eastern District of  
 5 California, through its Local Rules of Practice, permits  
 6 independent motions under Rule 56(d). Local Rule 56-260,<sup>2</sup>  
 7 entitled "Motions for Summary Judgment or Summary Adjudication"  
 8 (emphasis added), provides in subsection 56-620(f) that

9 This Rule shall apply to motions for orders specifying  
 10 material facts that appear without substantial  
 11 controversy pursuant to Fed. R. Civ. P. 56(d), except  
 12 that the proposed "Statement of Undisputed Facts" and  
 13 the "Statement of Disputed Facts" shall be limited to  
 14 the facts that the moving party asserts are without  
 15 substantial controversy and the facts the opposing  
 16 party contends are in dispute.

17 L.R. 56-620(f) (2007) (emphasis added).

18 Second, in this instance, to require Trustee to file a  
 19 motion seeking complete summary judgment or explicitly request  
 20 full summary judgment in his motion before the court is able to  
 21 enter a partial summary adjudication pursuant to Rule 56(d) would  
 22 needlessly elevate form over substance and confound the policy  
 23 underlying Rule 56(d). The issue of perfection of Bank's  
 24 security interest is potentially case dispositive. Both the Bank  
 25 Motion to Reconsider and the Second Trustee SJ Request, and the  
 26 parties' efforts in reaching the Stipulated Facts are primarily

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27 <sup>2</sup> Local Rule 56-260 does not apply to this adversary  
 28 proceeding because it is not incorporated by Local Bankruptcy  
 Rule 1001-1(c). However, the existence of this rule in the  
 District Court highlights the flaw in Bank's argument.

1 directed toward resolving this issue. Even if the adjudication  
2 of this issue were not to result in the immediate disposition of  
3 the case, significant time needed for trial would be saved. The  
4 partial summary adjudication requested by Trustee goes much  
5 further than seeking the resolution of a merely evidentiary  
6 matter en route to summary judgment, or seeking an adjudication  
7 of an issue of fact which would not be dispositive of an issue or  
8 even part of an issue. Courts have recognized distinctions in  
9 the type of issues that are to be resolved by partial summary  
10 adjudication in determining whether a request for a partial  
11 adjudication is proper. See Barker, 651 F.2d at 1123 (noting  
12 summary judgment may be proper as to some issues but not as to  
13 others). In addition, Ninth Circuit district courts have found  
14 independent requests for partial summary adjudication to be  
15 appropriate where the fact or issue to be adjudicated is  
16 potentially case dispositive. See Phase Four Industries, Inc. v.  
17 Marathon Coach, Inc., 2005 WL 2676887 N.D.Cal. at \*6 (October 20,  
18 2005) ("The efficacy of this approach is particularly suitable to  
19 this case because the issue of priority of inventorship or  
20 derivation is potentially case dispositive."); Advanced  
21 Semiconductor Materials America Inc. v. Applied Materials Inc.,  
22 1995 WL 419747 (N.D. Cal. July 5, 1995) (concluding that  
23 claimant's motion for partial summary judgment on a significant,  
24 dispositive issue was proper); Ajir v. Exxon Corporation, 1995  
25 WL 261411, at \*4 (N.D.Cal. May 2, 1995) (concluding that a motion  
26 for partial summary judgment may properly be directed to only  
27  
28

1 part of a claim where summary adjudication of discrete theories  
2 of liability helps focus issues and conserve judicial resources).

3 For the foregoing reasons, Trustee may seek by independent  
4 motion a partial summary adjudication as to the issues of  
5 perfection of Bank's security interest and avoidance of Bank's  
6 security interest.

7 **GSMD-1 and GSMD-2: Perfection of Bank's Security Interest**

8 The perfection issue presented here depends on the interplay  
9 between Division 9 of the California Commercial Code<sup>3</sup> and the  
10 California Vehicle Code. The court's analysis begins with the  
11 Commercial Code. "Except as otherwise provided in subdivisions  
12 (c) and (d), this division applies to each of the following: (1)  
13 A transaction, regardless of its form, that creates a security  
14 interest in personal property or fixtures by contract...." Cal.  
15 Comm. Code. § 9109(a)(1) (West 2007). It is undisputed that  
16 Debtor granted Bank a security interest in the Trailers by  
17 contract. As noted above, the only issue is whether or not that  
18 security interest was properly perfected.

19 The general rule regarding perfection of security interests  
20 in personal property is set forth in Commercial Code Section  
21 9310. "Except as otherwise provided in subdivision (b) and in  
22 subdivision (b) of Section 9312, a financing statement must be  
23 filed to perfect all security interests and agricultural liens."  
24 Cal. Comm. Code § 9310(a) (West 2005). Among the exceptions set

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25  
26 <sup>3</sup> Unless otherwise noted, all references to Division 9 of  
27 the California Commercial Code are to such Division as it was  
revised and effective on July 1, 2001.

1 forth in Section 9310(b) is one incorporating Section 9311. "The  
2 filing of a financing statement is not necessary to perfect a  
3 security interest that satisfies any of the following conditions:  
4 ... (3) It is a security interest in property subject to a  
5 statute, regulation or treaty described in subdivision (a) of  
6 section 9311." Cal. Comm. Code § 9310(b)(3) (West 2005). Section  
7 9311(a)(2)(A) is implicated under the facts of this adversary  
8 proceeding.

9 Except as otherwise provided in subdivision (d), the  
10 filing of a financing statement is not necessary or  
effective to perfect a security interest in property  
11 subject to any of the following:  
12 . . .

13 (2)(A) The provisions of the Vehicle Code which require  
14 registration of a vehicle or boat.  
15 Cal. Comm. Code § 9311(a)(2)(A) (West 2007) (Emphasis added).

16 The court notes that Section 9311 contains an exception in  
17 Subsection (d), the application of which would obviate any need  
18 to proceed further.

19 (d) During any period in which collateral subject to a  
20 statute specified in paragraph (2) of subdivision (a)  
21 is inventory held for sale or lease by a person or  
leased by that person as lessor and that person is in  
the business of selling goods of that kind, this  
section does not apply to a security interest in that  
collateral created by that person.

22 Cal. Comm. Code § 9311(d) (West 2007). The court concludes that  
23 subdivision (d) does not apply to the facts of this case for two  
24 reasons: (1) because the Trailers are not "inventory," and (2)  
25 because the Debtor was not in the business of selling trailers.

26 Inventory is a defined term in the Commercial Code.

1 "Inventory" means goods, other than farm products,  
2 which are any of the following:

3 (A) Leased by a person as a lessor.  
4 (B) Held by a person for sale or lease or to be  
5 furnished under a contract for service.  
6 (C) Furnished by a person under a contract of service.  
7 (D) Consist of raw materials, work in process, or  
8 materials used or consumed in a business.

9 Cal. Comm. Code § 9102(48) (West 2007). None of these  
10 definitions applies to the Trailers. Debtor owned the Trailers  
11 for his own use to transport grapes from his various vineyards to  
12 various sites for processing.

13 Additionally, the Debtor was not in the business of selling  
14 farm trailers. He operated an agricultural enterprise in which  
15 his sole proprietorship Michael Hat Farming Company grew grapes  
16 throughout the San Joaquin Valley and elsewhere. Those grapes  
17 were sold both to Debtor's wholly owned corporations Grapeco,  
18 Inc., and Capello, Inc., and to third parties. Debtor used the  
19 Trailers seasonally to haul grapes from his fields to the  
20 processing facilities.

21 Because the Trailers were not "inventory," the holding of In  
22 re Babaeian Transportation Co., 206 B.R. 536, 543 (Bankr. C.D.  
23 Cal. 1997) is distinguishable. In Babaeian, the party giving the  
24 security interest in the taxi cabs was leasing the vehicles to  
25 the individual drivers. Thus the vehicles fell squarely within  
26 the ambit of Commercial Code Section 9102(48) (A), "goods...leased  
27 by a person as a lessor."

28 The court must therefore resolve the question of whether or  
not the Trailers are property "subject to the provisions of the  
Vehicle Code which require registration of a vehicle or boat."

1 If so, then the Vehicle Code governs perfection. If not, then  
2 the terms of the Commercial Code apply. The answer to this  
3 question is resolved by the express language in Sections 6300 and  
4 6301 of the California Vehicle Code.

5 Bank focuses its argument on the use, or more particularly  
6 the lack of use, of the Trailers on the Petition Date. It argues  
7 that the Trailers were not required to be registered, and  
8 therefore were not "subject to the provisions of the Vehicle Code  
9 which require registration of a vehicle," because they were not  
10 being driven, moved or left standing on a highway or in any off-  
11 street public parking facility as of the Petition Date. Bank  
12 points to language in California Vehicle Code Section 4000(a)(1)  
13 which states that a vehicle must be registered to do any of the  
14 foregoing. Bank's argument incorrectly assumes that Section  
15 4000(a)(1) sets forth the only requirements for registration of a  
16 vehicle. That is not the case. Vehicle Code Sections 6300 and  
17 6301 are also, in and of themselves, "provisions of the Vehicle  
18 Code which require registration of a vehicle." Both sections are  
19 set forth fully below.

20 Except as provided in Sections 5905, 5907, and 5908, no  
21 security interest in any vehicle registered under this  
22 code, irrespective of whether the registration was  
23 effected prior or subsequent to the creation of the  
24 security interest, is perfected until the secured party  
25 or his or her successor or assignee has deposited,  
either physically or by electronic transmission  
pursuant to Section 1801.1, with the department, at its  
office in Sacramento, or at any other office as may be  
designated by the director, a properly endorsed  
certificate of ownership to the vehicle subject to the  
security interest showing the secured party as legal  
owner if the vehicle is then registered under this  
code, or, if the vehicle is not so registered, an

1 application in usual form for an original registration,  
2 together with an application for registration of the  
3 secured party as legal owner, and upon payment of the  
4 fees as provided in this code.

5 Cal. Veh. Code § 6300 (West 2000 & Supp. 2006).

6 When the secured party, his or her successor, or his or  
7 her assignee, has deposited, either physically or by  
8 electronic transmission pursuant to Section 1801.1,  
9 with the department a properly endorsed certificate of  
10 ownership showing the secured party as legal owner or  
11 an application in usual form for an original  
12 registration, together with an application for  
registration of the secured party as legal owner, the  
deposit constitutes perfection of the security interest  
and the rights of all persons in the vehicle shall be  
subject to the provisions of the Uniform Commercial  
Code, but the vehicle subject to the security interest  
shall be subject to a lien for services and materials  
as provided in Chapter 6.5 (commencing with Section  
3068) of Title 14 of Part 4 of Division 3 of the Civil  
Code.

13 Cal. Veh. Code § 6301 (West 2000 & Supp. 2006).

14 The statutes are not models of clarity as the language used  
15 therein does not precisely mesh with that used in the Commercial  
16 Code. This is likely so because the two schemes were drafted  
17 decades apart. While the beginning of Section 6300 seems to make  
18 it apply only to vehicles already registered, the Section goes on  
19 to require the deposit with the DMV of a properly endorsed  
20 Certificate of Ownership "showing the secured party as legal  
21 owner if the vehicle is then registered..., or, if the vehicle is  
22 not so registered, an application ...for an original  
23 registration, together with an application for registration of  
24 the secured party as legal owner,...." Vehicle Code Section 6301  
25 completes the scheme by stating that the deposit of the things

1 specified in Section 6300 "constitutes perfection of the security  
2 interest."

3       Thus, Vehicle Code Sections 6300 and 6301 contemplate the  
4 taking of a security interest in an unregistered vehicle and  
5 provide that perfection in that circumstance requires deposit  
6 with the DMV of (1) a properly endorsed Certificate of Ownership,  
7 (2) an application for an original registration and (3) an  
8 application for registration of the secured party as legal owner  
9 (not to mention the payment of all required fees).<sup>4</sup>

10      The first reference in Vehicle Code section 6300 to  
11 registered vehicles, when read in conjunction with the following  
12 clause "irrespective of whether the registration was effected  
13 prior or subsequent to the creation of the security interest"  
14 appears simply (1) to acknowledge that registration may occur  
15 only as a result of the creation of the security interest and the  
16 attempt to perfect it and (2) to negate the very argument being  
17 made by Bank - that section 6300 applies only to vehicles which  
18 are already registered.

19  
20      

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21      <sup>4</sup> The court notes that nothing in the scheme embodied in  
22 Sections 6300 and 6301 requires regular renewals of registration  
23 after perfection in order for the security interest to remain  
24 perfected. The scheme only sets forth the method by which a  
25 secured party requests that the DMV to issue a certificate of  
26 title and a registration certificate showing that party as  
27 lienholder. Once the secured party is listed as lienholder on  
the certificate of title, its lien is perfected. Thereafter, a  
lapse in registration or the filing of a Certificate of Non-  
Operation does not affect the lienholder's perfected status  
because of the creditor's appearance on the certificate of title  
provides constructive notice of its lien. Babaeian  
Transportation Co., 206 B.R. at 542.

1       The Trailers are not "subject to the provisions of the  
2 Vehicle Code which require registration of a vehicle" merely in  
3 the sense that they are vehicles which must be registered  
4 whenever the Vehicle Code says so. They are "subject to the  
5 provisions of the Vehicle Code which require registration of a  
6 vehicle" because Bank took a security interest in them and wanted  
7 to perfect that security interest.

8       None of the three exceptions contained in the first sentence  
9 of Section 6300 applies here. Vehicle Code Section 5905  
10 addresses circumstances where a security interest is satisfied,  
11 cancelled or released and a new security agreement is executed  
12 within 10 days thereafter between the same parties. In that  
13 instance, the security interest is perfected on execution and the  
14 formalities need not be performed. Vehicle Code Section 5907  
15 applies to vehicles constituting inventory. As noted above, the  
16 Trailers were not inventory. Vehicle Code Section 5908 applies  
17 to subsequent transfers of security interests previously  
18 perfected under Section 6300. The facts of this case fit into  
19 none of the three exceptions.

20       This reading of Sections 6300 and 6301 also avoids the  
21 absurdity of the logical extension of the Bank's argument. In  
22 the hypothetical put to the parties on more than one occasion,  
23 the court posited facts that would result in the flipping back  
24 and forth in perfection requirements depending on whether a  
25 vehicle at any particular instant is being driven, moved or left  
26 standing in a manner described in Vehicle Code section

1 4000(a)(1). The court's conclusion is instead consistent with  
2 the common understanding of perfection of security interests in  
3 vehicles - that the Vehicle Code controls perfection of security  
4 interests in vehicles, except for one carve-out for vehicles held  
5 as inventory, typically by an automobile dealer.

6         Meraz v. Farmer Insurance Exchange, 92 Cal.App.4th 321  
7 (Cal.Ct.App. 2001), does not require a different result. The  
8 Meraz court considered a dispute over the proper interpretation  
9 of language in an insurance policy. Nowhere in Meraz was the  
10 issue of perfection implicated because no security interest  
11 existed in the van/tool shed. Therefore, the state court was not  
12 required to analyze the interplay between Vehicle Code Sections  
13 6300 and 6301 and Commercial Code Section 9311(a)(2)(A). It  
14 simply analyzed those sections of the Vehicle Code that could  
15 arguably be analogized to the facts presented in that case. It  
16 needed go no further than it did. Meraz is not applicable to the  
17 issue facing this court.

18         This court's interpretation of Sections 6300 and 6301 is  
19 also consistent with precedent from the California Supreme Court.  
20 In T & O Mobilehomes v. United California Bank, 40 Cal.3d 441,  
21 709 P.2d 430, 220 Cal.Rptr. 627 (1985), the California Supreme  
22 Court discussed extensively the interplay between the Commercial  
23 Code and the Vehicle Code on the subject of perfection. T & O  
24 Mobilehomes is not dispositive here because it addressed a  
25 different issue, holding that the "interest of a bona fide  
26 purchaser of a vehicle subject to registration under the Vehicle

1 Code prevails over a technically perfected security interest  
 2 which is not disclosed on the certificate of ownership." T & O  
 3 Mobilehomes, 40 Cal.3d at 455. However, the discussion therein  
 4 is relevant to this matter because in 1979, when the transactions  
 5 at issue in T & O occurred, mobilehomes were subject to  
 6 perfection under the Vehicle Code. See T & O Mobilehomes, 40  
 7 Cal.3d at 447-48.

8 The following excerpt is reproduced at length to provide  
 9 sufficient context, both factual and temporal, for the discussion  
 10 in T & O Mobilehomes.

11 As previously noted, the UCC provides that a perfected  
 12 security interest is generally effective against a  
 13 purchaser of the collateral. (See §§ 9201, 9301, subd.  
 14 (1)(c), but see § 9307, subd. (1).) This rule is  
 15 premised upon the assumption that the filing of a  
 16 financing statement with the Secretary of State will  
 17 permit prospective purchasers and encumbrancers to  
 18 ascertain the existence of security interests in the  
 19 property by checking a centralized record system. In  
 20 other words, the UCC's perfection system, like the  
 21 title recordation systems employed for real property,  
 22 is based on constructive notice given through  
 23 recordation. (See Note, Security Interests in Motor  
 24 Vehicles Under the UCC: A New Chassis for Certificate  
 25 of Title Legislation (1961) 70 Yale L.J. 995, 1005  
 26 [hereafter Security Interests in Motor Vehicles].)

27 By contrast, the special scheme employed for the  
 28 registration of security interests in motor vehicles  
 relies primarily on actual notice to subsequent  
 purchasers through a certificate of ownership held by  
 the seller. (See Security Interests in Motor Vehicles,  
 ibid.; Comment, The California Used Car Dealer and the  
Foreign Lien - A Study in the Conflict of Laws (1959)  
 47 Cal.L.Rev. 543, 546-547.) Because this "full title"  
 system requires all security interests to be listed on  
 the statutory certificate of ownership (see Veh. Code,  
 §§ 370, 4451, 4453), a purchaser may rely on the  
 certificate and is not expected to check a centralized  
 set of records to determine whether a security interest  
 has been recorded. [footnote]

1 California adopted the full title system decades before  
 2 the advent of the UCC, and the system remains  
 3 essentially unchanged. The buyer's right to rely on  
 4 the information on the certificate of ownership has  
 5 been emphasized by our courts both before and after the  
 6 enactment of the UCC. In First National Bank of Hays  
 7 City v. Sprigg (1962) 209 Cal.App.2d 258 [25 Cal.Rptr.  
 8 838], decided one year before the enactment of the UCC,  
 9 the court observed that "California is known as a 'full  
 10 title' state insofar as registration of motor vehicles  
 11 is concerned. This means that anyone transacting  
 12 business with the owner of a motor vehicle can rely  
 13 upon the title as reflected by the registration  
 14 certificate, without further inquiry." (Id., at pp.  
 15 259-260.)

16 Ferraro v. Pacific Finance Corp. (1970) 8 Cal.App.3d  
 17 339 [87 Cal.Rptr. 226], decided seven years after  
 18 adoption of the UCC, reached the same conclusion. "In  
 19 California, as is well known to anyone engaged in the  
 20 business of selling or lending money on the security of  
 21 automobiles, a prospective purchaser of a motor vehicle  
 22 without knowledge of any defect of title may rely  
 23 exclusively on the information disclosed by the  
 24 statutory certificate of ownership." (Id., at p. 346,  
 25 fn. 1.)

26 Like full title statutes in other states, Vehicle Code  
 27 section 6301 holds a purchaser to constructive notice  
 28 of a security interest from the time the secured  
 party's application for registration as legal owner is  
 deposited with the DMV. (See Veh. Code, §§ 6301, 6302;  
Security Interests in Motor Vehicles, *op. cit. supra*,  
 at p. 1005.) However, the purpose of this provision is  
 primarily to establish priority among two or more  
 competing lienholders according to time of receipt of  
 the applications. (See *ibid.*) The deposit of the  
 application is deemed to impart constructive notice  
 only because it is assumed that the security interest  
 will actually be recorded in the DMV's files. (See  
Eckhardt v. Morley (1934) 220 Cal. 229, 230-231 [30  
 P.2d 423].) In Eckhardt, this court construed the  
 predecessor to Vehicle Code section 6301 to require  
 actual registration before constructive notice would be  
 deemed to date from the time of deposit. (*Ibid.*)

29 The same reasoning applies to the requirement for  
 30 notation of the security interest on the certificate of  
 31 ownership. Upon registration, the DMV is required to  
 32 issue a new certificate of ownership to the legal owner  
 33 listing the legal owner's name and address. (See Veh.  
 34 Code, §§ 1800, subd. (a), 4450, 4451, 4453, 6302.)

1 Thus, it is assumed that the deposit of an application  
 2 for registration will result in simultaneous  
 3 registration of the security interest and issuance of a  
 4 new certificate of ownership listing the secured party  
 as the legal owner. The deposit should not be deemed to  
 impart constructive notice to a buyer unless the  
 security interest has been accurately listed on the  
 certificate of ownership.

5 T & O Mobilehomes v. United California Bank, 40 Cal.3d 441, 448-  
 6 51, 709 P.2d 430, 220 Cal.Rptr. 627 (1985). The applicable  
 7 sections of both the Commercial Code and the Vehicle Code  
 8 referenced in T & O Mobilehomes are materially unchanged today.

9 T & O Mobilehomes applied pre- and post-UCC Commercial Code  
 10 Section 9302(3)(b). The pre-UCC version provided:

11 " (3) The filing of a financing statement otherwise  
 12 required by this division is not necessary or effective  
 13 to perfect a security interest in property subject to  
 14 ... [P] (b) The provisions of the Vehicle Code which  
require registration of a vehicle or boat; but during  
 15 any period in which collateral is inventory, the filing  
 provisions of this division (Chapter 4) apply to a  
 security interest in that collateral ...."

16 See T & O Mobilehomes, 40 Cal.3d at 447 n.6. (emphasis added)  
 17 (ellipsis in original). The 1981 version of the statute  
 18 provided:

19 3) The filing of a financing statement otherwise  
 20 required by this division is not necessary or effective  
 21 to perfect a security interest in property subject to  
 22 ... (b) The provisions of the Vehicle Code which  
require registration of a vehicle or boat, or  
 23 provisions of the Health and Safety Code which require  
 24 registration of a mobilehome or commercial coach; but  
 during any period in which collateral is inventory, the  
 filing provisions of this division (Chapter 4  
 (commencing with Section 9401)) apply to a security  
 interest in that collateral.

1 Cal. Comm. Code § 9302(3)(b) (West, Westlaw through 1981  
2 legislation) (emphasis added). The current version reads as  
3 follows:

4 Except as otherwise provided in subdivision (d), the  
5 filing of a financing statement is not necessary or  
6 effective to perfect a security interest in property  
subject to... (2)(A) The provisions of the Vehicle Code  
which require registration of a vehicle or boat.

7 Cal. Comm. Code § 9311(a)(2)(A) (West 2007) (emphasis added).  
8 There are three non-material changes in the current version.  
9 First, Division 9 was renumbered and the emphasized language has  
10 been moved from Section 9302(3)(b) to Section 9311(a)(2)(A).  
11 Second, the reference to the Health and Safety Code provision  
12 regarding mobilehome perfection has been moved to Section  
13 9311(a)(2)(B). Third, the inventory exception has been moved to  
14 Section 9311(d). The emphasized language in each excerpt above  
15 is identical in all three versions of the relevant section of the  
16 Commercial Code.

17 Vehicle Code Section 6301 has seen even less alteration  
18 since T & O Mobilehome. The 1979 version of the statute read as  
19 follows:

20 When the secured party, his or her successor, or his or  
21 her assignee, has deposited with the department a  
properly endorsed certificate of ownership showing the  
22 secured party as legal owner or an application in usual  
form for an original registration, together with an  
application for registration of the secured party as  
23 legal owner, the deposit constitutes perfection of the  
security interest and the rights of all persons in the  
24 vehicle shall be subject to the provisions of the  
Uniform Commercial Code....

25 See T & O Mobilehome, 40 Cal.3d at 448. The current version of  
26 the statute reads as follows:  
27

1 When the secured party, his or her successor, or his or  
2 her assignee, has deposited, either physically or by  
3 electronic transmission pursuant to Section 1801.1,  
4 with the department a properly endorsed certificate of  
5 ownership showing the secured party as legal owner or  
6 an application in usual form for an original  
registration, together with an application for  
registration of the secured party as legal owner, the  
deposit constitutes perfection of the security interest  
and the rights of all persons in the vehicle shall be  
subject to the provisions of the Uniform Commercial  
Code....

7 Cal. Veh. Code § 6301 (West 2000 & Supp. 2006). The only change  
8 is the addition of a provision allowing electronic submission of  
9 the documents required for perfection.

10 T & O Mobilehome's conclusion that California is a full  
11 title jurisdiction continues to be valid. The Trailers became  
12 "subject to the provisions of the Vehicle Code which require  
13 registration of a vehicle" when Bank took a security interest in  
14 them and wanted to perfect that interest. Bank's security  
15 interest in the Trailers was therefore unperfected as of the  
16 Petition Date because Bank failed to comply with the perfection  
17 requirements of Vehicle Code Sections 6300 and 6301.

18 **GSMD-2: Avoidance**

19 Having determined that Bank's security interest was  
20 unperfected on the Petition Date, the court now turns to  
21 Trustee's request for a determination that he can avoid Bank's  
22 security interest pursuant to 11 U.S.C. § 544.

23 The request for a determination of avoidability is denied.  
24 The Second Trustee SJ Request asks for "summary judgment on the  
25 first claim for relief, subject to any remaining affirmative  
26 defenses that [Bank] can properly assert." The ruling that

1 Trustee requests would leave undecided facts and issues relating  
2 to Bank's affirmative defenses. Because Trustee has not  
3 established that none of Bank's affirmative defenses can bar  
4 recovery on the first claim for relief, Trustee is not presently  
5 entitled to a determination that he can avoid Bank's unperfected  
6 security interest.

7 **CONCLUSION**

8 The Bank Motion to Reconsider is granted. The court  
9 committed clear error in its initial ruling on the First Bank SJ  
10 Request and therefore the First Bank SJ Order is vacated.

11 On reconsideration, the First Bank SJ Request is granted in  
12 part and denied in part. The provisions of the California  
13 Vehicle Code governed the perfection of Bank' security interest  
14 in the Trailers. Because Bank failed to perfect its security  
15 interest under the provisions of the Vehicle Code, Bank's  
16 security interest in the Trailers was unperfected on the Petition  
17 Date. Bank has failed to show in the First Bank SJ Request that  
18 it is entitled to judgment as a matter of law and summary  
19 judgment for Bank is therefore denied. However, Trustee as non-  
20 moving party is entitled to an order setting forth the following  
21 partial summary adjudication: Bank's security interest in the  
22 Trailers was not perfected as of the Petition Date.

23 The Second Trustee SJ request is granted in part. Trustee  
24 is entitled to an order setting forth the following partial  
25 summary adjudication: Bank's security interest in the Trailers  
26 was not perfected as of the Petition Date.

27

28

1        Except as set forth above, the above-captioned motions are  
2 denied.

3        The court will issue separate orders.

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5        Dated: SEP -4 2007

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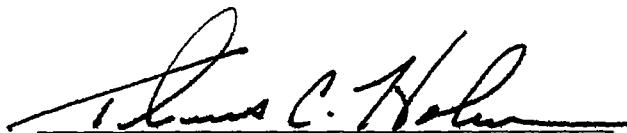
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Thomas C. Holman  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA

CERTIFICATE OF MAILING

The undersigned deputy clerk in the office of the United States Bankruptcy Court for the Eastern District of California hereby certifies that a copy of the document to which this certificate is attached was mailed today to the following entities listed at the address shown on the attached list or shown below.

Merle C. Meyers  
44 Montgomery St #1010  
San Francisco, CA 94104

Robert B. Kaplan  
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San Francisco, CA  
94111-3824

Office of the U.S. Trustee  
501 I St #7-500  
Sacramento CA 95814

DATED: 9/4/07

By:

Deputy Clerk

Jennifer Johnson

EDC 3-070 (New 4/21/00)